

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,621

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her request to issue a fuel assistance check directly to her rather than to a certified fuel dealer.

FINDINGS OF FACT

1. The petitioner is a sixty-seven-year-old woman who lives on a farm with her eighty-eight year old husband, who is disabled by Alzheimer's disease, her adult daughter and her grandchild. For many years they have heated their home with wood obtained from logging on their own property, which includes 190 acres of forest. For the past three to four years, the petitioner's husband has been unable to do his own logging and they have paid someone to bring green logs out of the woods which are then cut, split and stacked by the petitioner with the help of several friends and neighbors. They use about ten to twelve cords of wood per year to heat their older home.

2. The petitioner and her husband have been recipients of fuel assistance benefits through the Department for a number of years. In the past, they have received their fuel assistance benefits directly and have used it to pay persons who have helped them prepare their wood for burning. This summer (sometime before August 15, 1996), they received an application form for fuel assistance and an "information sheet" which informed them as follows:

Instead of sending you a check, the department will issue a line of credit directly to your primary fuel supplier. This line of credit may be applied to current fuel purchases only. It may not be used for past-due balances, for repairs to the heating system, or for special delivery charges. The line of credit will be issued in two installments, one in November and one in February.

The petitioners applied for assistance before the September 30, 1996, deadline and were mailed a notice on November 25, 1996, that they had been found eligible for a \$390 line of credit to be issued to their fuel supplier for the period from November 1, 1996 to March 31, 1997. They were advised that any credit they did not use had to be returned to the Department. The petitioners were orally informed that

their wood supplier had to be on a list of persons "certified" to receive payments from the Department. 3. By November, the petitioner had already incurred over \$1,000 (including \$300 for her own labor) in expenses for splitting, cutting and hauling wood to her shed, a process which began last summer. After receiving the information about the need for a "certified dealer", the petitioner contacted several wood dealers on the Department's list to see if she could get someone to help her cut and split the logs which had been pulled out of the woods this year. Only one of the dealers agreed to do so and he came to her home and worked with her and her daughter one day for a flat rate of \$150 to cut, split and stack a few cords of wood. All in all, the petitioner was able to obtain about fourteen cords of logs for heating her home from these two sources. Because much of the wood was green, she also bought three cords of seasoned dry wood from a neighbor who is not a wood dealer for \$375. She has paid some, but not all, of her fuel related expenses out of her property tax account and loans on an insurance policy.

4. The petitioner asked that the Department pay the fuel assistance directly to her or to certify her as a wood dealer. The Department has refused because such action would essentially be a direct payment to the household which it maintains cannot be allowed under the statute and regulations. The petitioner does not dispute the amount of her fuel assistance grant.

ORDER

The decision of the Department is affirmed.

REASONS

By Public Act 158 enacted during the 1995 adjourned session (1996), the Vermont General Assembly established a state-funded home heating fuel assistance program for low-income households which requires, among other things, that payments be made directly to fuel suppliers, and not to consumers. The Department is required by statute to certify those fuel suppliers who can receive direct payment and those suppliers must sell wood "in the normal course of business" in order to be certified. 33 V.S.A. §§ 2604, 2607 (a) and (d). This program is funded both through appropriations from the General Assembly and funds from the federal government through the Low Income Home Energy Assistance Act.

Pursuant to that Act, the Department overhauled its fuel assistance program and promulgated new regulations effective September 1, 1996, setting criteria for assistance under this program. Among these criteria are provisions linking eligibility and payment of benefits to persons who receive heating assistance from "certified fuel suppliers":

Only those households that bear direct responsibility

for payments to certified fuel suppliers, as defined in Section 2912, for their primary heating fuel are eligible for assistance. . . .

W.A.M. § 2901.2

Benefits will be issued on behalf of an eligible household in the form of a line of credit established by the Department of Social Welfare with the primary heating fuel supplier identified by the household in its application form, provided that the supplier has been certified as described in Section 2912.

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W.A.M. § 2907.1

Section 2912 establishes extensive requirements for certification as a fuel supplier, including recordkeeping and verification of amounts of fuel used by recipients, guarantees with regard to size and timing of deliveries and costs of fuel, and specific reporting and accounting requirements to the Department and the consumer. A copy of that regulation is attached to this decision.

The Department, relying on the above regulations, has required the petitioner to designate a certified wood dealer to receive her fuel assistance benefits. The petitioner argues that this regulation is demeaning because she is able to handle her own finances and imposes a hardship for her and all others who supply their own wood. She does not argue that the regulation is illegal or that it violates any state or federal statute but rather that it is not rational and discriminates against persons who provide their own wood.

The above regulations represent a significant departure from the prior fuel program which allowed for direct payments to recipients. See W.A.M. § 2906, 12/6/95, Bulletin No. 95-46F. The Department justifies these regulations based on the mandates found in the new act which was enacted to eliminate fraud in the program and to ensure that funds put into the program are efficiently used for the provision of essential heat to needy Vermonters. 33 V.S.A. § 2601(a). Paying the petitioner directly either as an exception to the regulations or by certifying her as a fuel dealer would eliminate the accountability and efficiency built into the regulations, thus circumventing their intent.

The facts in this individual's case make it likely that a direct payment to her would result in a purchase of fuel to heat her home for the winter. However, the regulations do not allow for assessment of payment options on an individual basis. It cannot be found that the policy adopted by the Department is illegal or unreasonable given the language and goals of the new statute. This new plan is not unlike the Medicaid plan in which the Department makes payments only to certified professionals for the provision of medical services, and not directly to individuals. The petitioner can point to no right to entitlement to a direct payment of the funds.

Although the regulations as written do discriminate against persons who provide their own fuel, the State and the Department can make distinctions of this sort if they have a rational basis for doing so. (There is no suspect class or fundamentally protected right at stake here which would invoke a higher level of scrutiny.) That rational basis is found in the desire to use scarce funds efficiently and to minimize the possibility of fraud or waste. In addition, the regulations adopted by the Department do not block access to the program for the petitioner. Even under these more restrictive regulations, the Department will pay a certified wood dealer to cut, split and stack the petitioner's logs. As the petitioner and her husband are not able to accomplish these tasks themselves, they can take advantage of their credit line by getting a certified supplier to do it for them.

It is unfortunate that the petitioner has incurred expenses that she cannot even partially reimburse. However, she should have been aware since at least mid-August, based on the notice sent to all recipients, that the Department would not make a direct payment to her for her fuel this winter. She should note now that the new regulations require her certified wood dealer to return the balance of her \$390 credit line to the Department if it is unused by April 30, 1997. W.A.M. § 2907.4. In order to obtain her full benefit, she must contact her certified wood dealer and have him either provide more wood or

provide labor preparing her stumpage for burning up to the maximum amount or she will lose that benefit. The balance cannot be turned over to her to pay for her neighbor's wood or to pay her friends for their help. W.A.M. § 2908.1.

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